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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,046	06/07/2001	Dwip N. Banerjee	AUS920010445US1	9020

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EXAMINER	
O CONNOR, GERALD J	

ART UNIT	PAPER NUMBER
3627	

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/876,046	Banerjee et al.	
	Examiner	Art Unit	
	O'Connor	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *THREE* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *October 8, 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-40* is/are pending in the application.

4a) Of the above claim(s) *14-40* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *June 7, 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *20010816*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restriction

1. Applicant's election of Invention I (claims 1-13) in the reply filed October 8, 2004 is hereby acknowledged. Because applicant did not distinctly and specifically point out any supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 14-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed October 8, 2004.

Claim Rejections - 35 USC § 101

3. The following is a quotation of 35 U.S.C. 101:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-4 and 8-11 are drawn to a method of producing a disembodied data structure. It has been held that such claims are considered to comprise non-statutory subject matter, for merely manipulating an abstract idea without

producing any "useful, concrete, and tangible result." *In re Warmerdam*, 33 F.3d 1354; 31 USPQ2d 1754 (Fed. Cir. 1994).

Additionally, method claims that fail to require the use of any technology, such as claims 1-4 and 8-11, are considered non-statutory under § 101, for failing to fall within the technological arts. Claims must be tied to a technological art. To overcome this aspect of the rejection, a positive limitation in the body of the claim is required to recite the use of some technology, such as either a computer, *per se*, or else some other computer element that would inherently and necessarily require a computer (e.g., a website), or else some other aspect or element of technology.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e)[1] the invention was described in-
>
> > (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national

[1] The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) apply to the examination of this application as the application being examined was (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) as amended by the AIPA (post-AIPA 35 U.S.C. 102(e)).

application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

6. Claims 1, 2, and 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Izumi (JP 08055161).

Izumi discloses a method for processing information related to sales of a food product, said food product including a number of ingredients, said method comprising: determining a number of said food products which have been scheduled to be prepared for sale during a predetermined period of time; and, accessing a database to determine a reference number of food products which have been sold during a corresponding past period of time.

Regarding claim 2, the method of Izumi includes adjusting said number of food products scheduled for preparation in accordance with said referenced number.

Regarding claim 8, the method of Izumi includes maintaining a record of current inventory levels of said ingredients.

Regarding claim 9, the method of Izumi includes determining an occurrence of a sale of one of said food products; and adjusting an inventory level of one or more ingredients comprising said food product in response to said sale.

Regarding claim 10, the method of Izumi includes providing notice of low inventory levels when said inventory levels fall below a predetermined reference level.

Regarding claim 11, the method of Izumi includes automatically ordering amounts of said one or more ingredients when said inventory levels for said one or more ingredients falls below said reference levels.

Regarding claim 12, the method of Izumi includes accomplishing said ordering by sending an electronically generated message to a supplier of said one or more ingredients.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 3-7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Izumi (JP 08055161).

Izumi discloses a method for processing information related to sales of a food product, as applied above in the rejection of claims 1, 2, and 8-12 under 35 U.S.C. 102(b), but the method of Izumi does not explicitly include that the database includes information related to a stated reason for said reference number, the information being presented on a display device.

However, it is well known, hence obvious, to modify a sales forecast when a reason exists for the modification. For example, say a restaurant would normally expect to sell 100

meals on a particular day of the week in a particular month. If, however, one year that particular day of the week happened to coincide with the 14th day of the month, and the month was February, one of ordinary skill in the art would recognize that far more meals would be sold that night than otherwise would be expected, the reason for the far greater sales being Valentine's Day, a particularly busy night for restaurants, and the reason of it being Valentine's Day would be indicated on a display device, that being a Calendar.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Izumi so as to provide that the database would include information related to a stated reason for said reference number, the information being presented on a display device, as is all well known to do, in order to accommodate anticipated predictable fluctuations in the forecast due to external events such as holidays, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claims 5-7, the method of Izumi does not include that the food products which have been prepared for sale are placed in predetermined holding locations pending an order for a sale, the number of said food products which are available for sale being determined by product detecting means, wherein said product detecting means is either a light sensing device or a weight sensing device. However, placing food in a holding area once it has been prepared for sale, and product quantity detectors based on either of a beam of light or a weight of the product(s), are well known, hence obvious, to those of ordinary skill in the art, particularly with

respect to vending machines. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Izumi so as to include a storing prepared food items in a storage area, the storage area including a detector based on either of a beam of light or the weight of the products, as is well known to do, in order to accommodate a surge in sales such as occurs in the restaurant business at peak times such as the lunch hour rush, and to know at any moment how many prepared items were remaining "on-deck," ready to be sold, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Regarding claim 13, the method of Izumi does not include that the electronically generated message is an e-mail sent from a restaurant server system to a supplier server system. However, e-mail is certainly a well known, hence obvious, form of electronically generated message to send. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the method of Izumi so as to have the electronically generated message be sent in the form of an e-mail message sent from the server at the restaurant to the server at the supplier, as is well known to do, merely as a matter of design choice as a ready and convenient form/means of electronic message to use, and since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to the disclosure.

10. At any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is (703) 746-3976.

The examiner can normally be reached weekdays from 9:30 to 6:00.

Inquiries of a general nature or simply relating to the status of the application should be directed to the receptionist, whose telephone number is (703) 308-1113.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at (703) 308-5183.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (fax-back auto-reply receipt service provided). Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be left with the receptionist on the seventh floor of Crystal Park Five, 2451 Crystal Dr, Arlington, VA 22202.

GJOC
December 23, 2004

(12-23-04)

Gerald J. O'Connor
Patent Examiner
Group Art Unit 3627